U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM C. CHASE, III and DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION, Concord, NH

Docket No. 99-865; Submitted on the Record; Issued January 4, 2001

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB, VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating authorization for chiropractic treatment after January 8, 1996.

On January 25, 1988 appellant, then a 53-year-old compliance officer, filed a notice of traumatic injury and claim for continuation of pay (Form CA-1), alleging that on January 12, 1988 he sustained a back injury while removing material from his briefcase.

In a report dated February 17, 1988, Dr. Russell B. Grazier, a chiropractor, stated that x-rays showed a marked posterior rotation of the ilia consistent with a bilateral sacroiliac subluxation. He opined that appellant had a subluxation of the sacroiliac articulation and the lumbar unit, in particular the L5-S1 joint.

On March 16, 1988 the Office accepted appellant's claim for subluxation at L5-S1.

On February 27, 1989 appellant filed a traumatic injury claim alleging that on April 7, 1988, while reaching into the rear of his car to get his camera, he felt pain in his lower back. Appellant submitted a computerized tomography (CT) report dated April 12, 1988 from Dr. P.J. Attwood, a Board-certified radiologist, who diagnosed herniated disc at L4-5. In a report dated May 17, 1989, Dr. Grazier stated that appellant was under his care for manual manipulation of the spine to correct vertebral subluxations as demonstrated by x-rays.

In a report dated June 26, 1989, Dr. Grazier stated that appellant had exacerbated his January 12, 1988 injury on April 7, 1988. He indicated that appellant was being treated for a lumbosacral subluxation complex and noted that appellant also had a herniated disc at L4-5.

The Office referred appellant to Dr. Tracy M. Walton, Jr., a Board-certified radiologist, for a second opinion as to whether subluxation was revealed. In a medical report dated December 15, 1989, Dr. Walton found degenerative disc disease of the lumbar spine and no radiographic evidence of herniated nucleus pulposus or subluxation.

The Office referred appellant to Dr. Jonathan L. Holzaepfel, a Board-certified orthopedic surgeon, for further evaluation. In a report dated March 16, 1990, Dr. Holzaepfel opined that appellant sustained an injury on January 12, 1988 which resulted in a herniated disc. Dr. Holzaepfel indicated that "previously obtained x-rays of the patient's lumbosacral spine have been reported as demonstrating physiologic degenerative changes." Dr. Holzaepfel indicated that current x-rays demonstrated degenerative changes with mild spur formation of the bodies of L4-5 and mild narrowing of the L5-S1 innerspace, with facet joints appearing to be well maintained.

By letter dated April 27, 1990, the claims examiner informed appellant that the Office was changing the accepted condition to lumbar disc herniation at L4-5, based on the March 16, 1990 medical report of Dr. Holzaepfel. The Office stated that it would pay bills for treatment of the accepted condition from a chiropractor only upon a written referral from a qualified physician and that it would not accept disability determinations from a chiropractor.

On May 23, 1990 Dr. Frank A. Graf, an orthopedic surgeon, wrote appellant a prescription to continue chiropractic care.

On June 7, 1990 appellant's claim was accepted for a herniated disc at L4-5.

The Office referred appellant to Dr. Roy Hepner, a Board-certified orthopedic surgeon. In a report dated May 29, 1992, Dr. Hepner opined that appellant did not have symptoms related to a disc herniation or sacroiliac instability. He concluded: "There is no evidence of spinal subluxation demonstrated on x-rays. Chiropractic manipulations may provide limited short-term benefit, but clearly do not provide long-term benefit in any case."

On October 1, 1992 the Office issued a notice of proposed termination of chiropractic care on the grounds that the weight of the current medical evidence failed to show a spinal subluxation demonstrated by x-ray to exist.

In a medical report dated October 9, 1992, Dr. Gregory S. Hertzberg, a chiropractor, noted that appellant was receiving conservative chiropractic care in his office. "Care involves specific chiropractic adjustments to correct and/or reduce vertebral subluxations of the spinal column."

Appellant also submitted another report from Dr. Grazier, dated October 28, 1992. He noted that appellant's diagnosis was lumbar and sacroiliac subluxation complexes with lumbosacral and sacroiliac sprain/strain resulting in a sciatic pain complicated by L5-S1 disc herniation. Dr. Grazier added that appellant's primary problem was vertebral subluxation which recurred due to normal daily activities and, in turn, caused his symptoms.

By decision dated November 23, 1992, the Office terminated chiropractic benefits. In an accompanying memorandum, the Office indicated that the termination was based on two grounds: The lack of subluxation as demonstrated by x-ray to exist and the failure of chiropractic treatment over four years to cure, provide relief, reduce the degree or period of disability or aid in lessening the amount of compensation.

Appellant appealed this decision to the Board. By decision dated September 26, 1994, the Board reversed the November 23, 1992 decision on the grounds that the Office did not meet its burden of proof in terminating authorization for chiropractic care.[1] Specifically, the Board found an unresolved conflict in the medical opinion evidence as to whether the 1988 x-rays demonstrated a subluxation. The Board also found that the Office failed to notify appellant in its October 1, 1992 proposal to terminate chiropractic treatment that section 8103 was grounds for termination. Thus, appellant had no opportunity to respond to the Office's assertion that chiropractic care did not meet the requirements of section 8103.

On November 28, 1995 the Office issued another notice of proposed termination of compensation. The notice stated that the proposed termination was based on the fact that the medical evidence failed to show that chiropractic care provided long-term benefits and, therefore, such care did not further the objectives of section 8103 of the Act.[2] The Office noted that appellant had not submitted any further evidence on this issue since the Board's decision.

By decision dated January 8, 1996, the Office terminated chiropractic benefits after January 8, 1996 on the grounds that such benefits did not provide long-term relief and were, therefore, not authorized under section 8103 of the Act.[3]

By letter dated January 26, 1996, appellant requested review of the written record.

In support of his claim, appellant submitted a January 24, 1996 report from Dr. Hepner, who stated that appellant had little change in his symptoms, that he doubted that appellant was a surgical candidate "in view of the fact that his symptoms seem to be mostly mechanical in nature and not specifically stenotic" and that he doubted he had anything else to offer appellant."

In a decision dated May 13, 1996 and finalized May 16, 1996, the hearing representative found that the weight of the medical evidence established that continued chiropractic treatment would not cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.

By letter dated June 10, 1996, appellant appealed the denial of chiropractic benefits to the Board. By order dated July 24, 1997, the Board remanded this case to the Office for reconstruction and proper assemblage of the case record, which had been timely forwarded to the Board. The Board requested that, to protect appellant's appeal rights, an appropriate decision be

[1] Docket No. 93-1124 (issued on September 26, 1994).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The statement in the Findings of Fact, paragraph 4, "The evidence of file establishes that chiropractic services are appropriate for his accepted condition," appears to be a typographical error, when read in context with the rest of the Findings of Fact and the accompanying memorandum.

issued.[4] Appellant's request for reconsideration of the Board's decision was denied by order dated October 20, 1997.[5]

By decision dated November 13, 1998, the Office found that since the medical evidence established that continued chiropractic care would only give relief on a temporary basis, continued chiropractic treatment would not further the objective of section 8103 of the Act, and accordingly, appellant's claim for chiropractic care beyond January 8, 1996 was denied.

The Board finds that the Office met its burden of proof in terminating appellant's chiropractic treatment after January 8, 1996.

Once the Office accepts a claim it has the burden of proving that the employees' disability has ceased or lessened before it may terminate or modify compensation benefits.[6] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[7]

Section 8103(3) of the Federal Employee's Act,[8] defining services and supplies," states: "Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary."[9] The diagnosis of a subluxation must, however, also be established as employment related for chiropractic treatment to be reimbursable.[10]

In this case, the Office relied on the failure of chiropractic treatment to cure, provide relief, reduce the degree or period of disability, or aid in lessening the amount of compensation to terminate chiropractic benefits.

Under section 8103 of the Act, the Office has the authority to provide medical services, appliances and supplies to an employee injured while in the performance of duty which the Office considers likely to cure, give relief, reduce the degree or period of disability, or aid in

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[4] Docket No. 96-2216 (issued July 24, 1997).

[5] Docket No. 96-2216 (issued October 20, 1997).

[6] *Karen L. Mayewski*, 45 ECAB 219, 221 (1993); *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 238, 241 (1984).

[7] *Jason C. Armstrong,* 40 ECAB 907 (1989).

[8] 5 U.S.C. § 8103.

[9] 5 U.S.C. § 8101(3).

[10] *Thomas W. Stevens*, 50 ECAB __ (Docket No. 97-1452, issued March 15, 1999); *Thomas M. Fitzgerald*, 47 ECAB 689, 690 (1996).

lessening the amount of monthly compensation.[11] In interpreting section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act.[12]

The Office has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing the means to achieve this goal.[13] The only limitation on the Office's authority is that of reasonableness.[14] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probably deductions from know facts.[15]

In its prior decision, the Board found that the Office failed to give adequate notice to appellant of its proposal to terminate chiropractic treatment under section 8103. The evidence has not changed since the Board made this determination. There is still no indication in the medical evidence that the continuing chiropractic treatment was furthering the objectives of section 8103. The only relevant evidence submitted was an opinion by Dr. Hepner that appellant had little change in his symptoms and that there was nothing else he had to offer him. This opinion does not indicate that further chiropractic treatment would further the goals under section 8103.

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[11] 5 U.S.C. § 8103.

[12] *Janice Kirby*, 47 ECAB 220, 225 (1995).

[13] *Id.*

[14] *Joe E. Williamson*, 36 ECAB 494 (1985).

[15] *Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs dated November 13, 1998 is hereby affirmed.

Dated, Washington, DC
January 4, 2001

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member